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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Z.M. et al., Persons Coming Under  
the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

T.P. et al.,

Defendants and Appellants.

A154990

(San Francisco City & County  
Super. Ct. Nos. JD16-3117, JD16-  
3325)

This appeal arises from dependency proceedings involving siblings Z.M., a girl born in October 2015, and G.V., a girl born in September 2016. In August 2018, at a hearing held pursuant to Welfare and Institutions Code section 366.26,<sup>1</sup> the juvenile court terminated the parental rights of the girls' mother, T.P. (Mother), and their presumed father, C.M. (Father), and selected adoption as the permanent plan for both girls.

On appeal, Mother and Father contend the San Francisco Human Services Agency (the Agency) did not comply with the notice, inquiry and other requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). The parents raise only the ICWA issue; neither parent raises any appellate arguments as to the merits of the juvenile court's

<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

decision terminating parental rights. The Agency concedes that its efforts under ICWA were not sufficient and that the case should be remanded to ensure compliance with ICWA. We agree and will conditionally reverse the orders terminating parental rights.

## **I. BACKGROUND**

We discussed the underlying dependency proceedings for Z.M. and G.V. in our January 2018 unpublished opinion addressing Father's petition for extraordinary writ relief under section 366.26, subdivision (*l*) and California Rules of Court, rule 8.452. (*C.M. v. Superior Court* (Jan. 26, 2018, A152407) [nonpub. opn.].) The parties are familiar with developments since that time. We recite only those facts pertinent to the parents' present appeals, specifically the facts pertaining to whether the Agency fulfilled its obligations under ICWA.

The Agency filed a dependency petition on behalf of Z.M. in April 2016. A detention report filed at that time states ICWA "does or may apply." An attachment states Mother told the social worker she has Cherokee lineage, and the paternal grandmother reported that, on the paternal side, the family has Cherokee lineage and is from the "Blackfoot" band. On a written form completed at the time of the detention hearing, Father stated he may have Cherokee ancestry. Mother stated on her form that she might have Cherokee ancestry and stated her maternal great grandmother ("MGGM"), G.M., was a member of "Cherokee—Southern States." On the basis of these responses, the court found at the detention hearing that, as to both Mother and Father, ICWA may apply.

In a jurisdiction/disposition report filed in May 2016, the social worker stated, "[M]other has not availed herself to the Agency and thus I have not been able to ascertain information regarding" her Indian ancestry. The report also stated that two of Mother's older children "have a dependency matter with this Court, where the ICWA did not apply to them."

On July 15, 2016, the Agency sent ICWA notices pertaining to Z.M. (form ICWA-030) to certain tribes. Responses were returned from several tribes, including the Choctaw Nation of Oklahoma, the United Keetowah Band of Cherokee Indians in

Oklahoma, the Eastern Band of Cherokee Indians, the Jena Band of Choctaw Indians, the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Mississippi Band of Choctaw Indians, the San Carlos Apache Tribe, the Yavapai-Apache Nation, the Tonto Apache Tribe, the Apache Tribe of Oklahoma, the Fort Sill-Chiricahua-Warm Spring Apache Tribe, and the White Mountain Apache Tribe. In substance, the responses from these tribes stated that, based on the information provided by the Agency, Z.M. was not a tribe member and was not eligible for membership.

The Cherokee Nation, on August 9, 2016, requested additional information, including: “paternal grandfather [J.V.]’s middle name and complete date of birth. Also paternal great grandfather [J.V.]’s middle name and complete date of birth.” (Bolding and capitalization omitted.) The record does not show whether the Agency provided this information to the Cherokee Nation or attempted to obtain the information from Father or his relatives.

The dependency petition for G.V. was filed in November 2016. The Agency’s detention report stated ICWA did not apply. On the forms completed in connection with the detention hearing, however, Mother and Father stated they might have Indian ancestry. Father stated he might have Cherokee ancestry. Mother also reported she might have Cherokee ancestry and stated her maternal great grandmother, A.R., was a member of the Cherokee tribe. The court found at the November 3, 2016 detention hearing that ICWA may apply. The record does not show whether the new information on Mother’s form was provided to the Cherokee tribes. No separate ICWA notices were sent concerning G.V.

In reports filed in both cases in January 2017, the Agency stated ICWA did not apply.

At the section 366.26 hearing in August 2018, the court asked whether an ICWA finding had been made. County counsel stated he would double-check and would “add it to calendar if that needs to be taken care of.”

## II. DISCUSSION

“ICWA notice is required to be sent whenever it is known or there is reason to know that an Indian child is involved in a ‘ “child custody proceeding” ’ within the meaning of ICWA, which includes a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. (§ 224.1, subd. (d); see § 224.2, subd. (a); 25 U.S.C. §§ 1903(1), 1912(a).) In such cases, notice must be sent to all federally recognized tribes of which the child may be a member or eligible for membership. (Cal. Rules of Court, rule 5.481(b)(1).)” (*In re M.R.* (2017) 7 Cal.App.5th 886, 903–904.)

“Juvenile courts and child protective agencies have ‘ “an affirmative and continuing duty to inquire whether a [dependent] child . . . is or may be an Indian child.” ’ ([Citation]; § 224.3; see Cal. Rules of Court, rule 5.481.) ‘The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings.’ ” (*In re M.R.*, *supra*, 7 Cal.App.5th at p. 904.)

Mother and Father contend the Agency and the juvenile court failed in several respects to comply with the notice and inquiry provisions of ICWA. Specifically, they argue (1) the Agency did not provide the Cherokee tribes with the name of a maternal relative furnished by Mother; (2) the Agency did not respond or conduct further inquiry after the Cherokee Nation asked for more information about certain paternal relatives; (3) the notice sent to tribes omits the paternal grandmother’s address and contact information; (4) the notice omits the identity of the maternal grandfather; (5) the Agency should have sent notice to the Blackfeet tribe; (6) the Agency did not send notices specifically addressing the section 366.26 hearing; and (7) the Agency only sent notices pertaining to Z.M. and did not send any concerning G.V. Father also notes the juvenile court did not make an ultimate finding as to whether ICWA applies.

In its response, while not addressing the specific points raised by Mother and Father, the Agency states that, “[a]fter a review of the record,” it “would appear that the notice requirements of ICWA were not met in their entirety.” The Agency agrees the

matter should be “conditionally reversed and remanded for the limited purpose of ensuring ICWA compliance[.]” The Agency also states that, in November 2018, it sent updated and corrected notices to tribes in both minors’ cases, and it will ask the juvenile court to “make ICWA findings at the appropriate time.”

In light of the Agency’s concession that notice was inadequate under ICWA, we agree with the parties that the appropriate course is to conditionally reverse the orders terminating parental rights and remand the case to ensure compliance with ICWA. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 711.)

### **III. DISPOSITION**

The orders terminating parental rights as to Z.M. and G.V. are conditionally reversed. The matter is remanded to the juvenile court with directions to order the Agency to comply with the inquiry and notice provisions of ICWA and of sections 224.2 and 224.3. If, after proper notice, no tribe claims Z.M. or G.V. is an Indian child, the orders terminating parental rights shall be reinstated. If any tribe claims Z.M. or G.V. is an Indian child, the court shall proceed in accordance with the provisions of ICWA and applicable state law.

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Streeter, J.

We concur:

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Pollak, P.J.

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Brown, J.

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